

JAMES HOWARD	§	
v.	§	CIVIL ACTION NO. 9:08cv238
DIRECTOR, TDCJ-CID	§	

The Petitioner James Howard, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his confinement. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Howard complains that new parole rules are being used to deny him release on parole, despite the fact that he was convicted before these new rule went into effect. He also complains that he is being denied parole due to “unchanging factors” and that each time he is denied, the Parole Board cites the same reasons.

The Magistrate Judge ordered the Respondent to answer the petition, and the Respondent filed a motion to dismiss arguing that all but one of Howard's claims are barred by the statute of limitations and that Howard did not exhaust his state remedies. Howard filed a response acknowledging the failure to exhaust but contending that his claims were not barred by the statute of limitations.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the motion to dismiss be granted with regard to the issue of exhaustion of state remedies and that the

petition be dismissed without prejudice. The Respondent filed objections to the Magistrate Judge's Report on March 30, 2009, re-asserting the limitations claim. These objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this case, together with the Report of the Magistrate Judge and the Respondent's objections thereto. Upon such *de novo* review, the Court has determined that the Report of the Magistrate Judge is correct and that the Respondent's objections are without merit. It is accordingly

ORDERED that the Respondent's objections are overruled and that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED without prejudice for failure to exhaust state remedies. It is further

ORDERED that the Petitioner James Howard is hereby DENIED a certificate of appealability *sua sponte*, with the denial of such certificate referring only to an appeal of the present case and having no effect upon Howard's right to seek redress in the courts of the State of Texas, nor upon his right to again seek relief in federal court in the event that he does not obtain the desired relief in state court. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So **ORDERED** and **SIGNED** this **16** day of **April, 2009**.



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Ron Clark, United States District Judge